IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8562 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRICITY BOARD

Versus

MP SINHA OR SUCCESSOR REGIONAL PF COMMISSIONER

Appearance:

MR S.B. VAKIL FOR MR. NK MAJMUDAR for Petitioner

MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /07/1999

C.A.V. JUDGEMENT

A preliminary objection has been raised by Shri B.T. Rao, learned counsel for the respondent, that this writ petition is not maintainable because of existence of alternative remedy of appeal against the impugned order and since alternative remedy of filing appeal against the impugned order has not been availed of by the petitioner the writ petition deserves to be rejected on this preliminary objection.

2. Shri S.B. Vakil, learned counsel for the petitioner and Shri B.T. Rao, learned counsel for the respondent, have been heard at length on this preliminary objection.

3. The impugned order Annexure-A has been passed under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short `Act'). Provision for appeal against such order is provided under Section 7-I of the Act which inter alia provides that any person aggrieved by an order under Section 7A may prefer appeal to the Tribunal against such order. As such there is no dispute that there is provision under the Act for alternative remedy by filing appeal against the impugned order. Admittedly, this remedy has not been availed of by the petitioner. The question is whether the writ petition can be entertained even though alternative efficacious remedy is available to the petitioner. Shri S.B. Vakil has drawn my attention to the prayers contained in the writ petition. The main prayer in the writ petition is to issue writ of mandamus or any appropriate writ, order or direction for quashing and setting aside the order dated 25.6.1998 Annexure-A. Thus, in effect, the prayer in the petition is to issue writ of certiorari for quashing the impugned order contained in Annexure-A.

4. Shri S.B. Vakil has contended that writ of certiorari can be issued even though alternative remedy by filing appeal is there and it has not been availed of. As against this, Shri B.T. Rao, learned counsel for the respondent has contended that existence of alternative efficacious remedy bars the maintainability of the petition claiming writ of certiorari. Certain cases were cited by both the sides and I propose to discuss them one by one.

5. In Sheela Devi Vs. Jaspal Singh (1991) 1 SCC 209 the apex court found that the respondent had alternative remedy of filing revision under Section 18 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972. This remedy was not availed. The respondent straightaway filed a writ petition before the High Court. The High Court had re-examined the matter on facts. The order of the High Court was set aside by the apex court and it was directed that the respondent will be at liberty to avail of the alternate remedy of revision, if he so desires. It is thus, clear from this latest pronouncement of the apex court of 13.7.1999 that existence of alternative remedy bars entertainment of writ petition under Article 226 of the Constitution of

India. It was also a case where writ of certiorari was prayed before the High Court.

6. Shri S.B. Vakil on the other hand referred to the apex court's verdict in State of U.P. Vs. Mohammad Nooh AIR 1958 SC 86 and contended that writ of certiorari can be issued in such matters even though right of appeal and provision of appeal is there in the statute. The apex court in this case observed that there is rule, with regard to certiorari as there is with mandamus, that it will lie where there is only no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by the statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies. (emphasis supplied). It is, thus, clear from the portion where emphasis has been supplied by me that the apex court observed that ordinarily the court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. The Supreme Court has therefore not laid down any absolute rule of law that in every case where there is alternative remedy, writ petition can be entertained ignoring existence of alternative remedy.

7. The Supreme Court further observed that this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than the rule of law. The superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction.

8. It is therefore further clear from the above observation of the apex court that the rule requiring the exhaustion of statutory remedies is not a rule of law but rule of policy, convenience, discretion and the discretion has to be exercised readily where there has been a denial of natural justice before a court of summary jurisdiction (emphasis supplied). Thus, two further conditions have to be established when writ jurisdiction can be exercised even though there is alternative remedy of appeal under the statute. The first condition is that there should be denial of principles of natural justice and the second is that such

denial should be before the court of summary jurisdiction.

9. Likewise, the observation of the apex court in this case that `it cannot be laid down as an inflexible rule of law that the superior court must deny the writ when the inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision' does not apply to the facts of this case because it is not a case where the impugned order has been passed discarding all the principles of natural justice and all accepted rules of procedure nor the conclusion has been arrived at in such a manner which shocks the sense of justice and fair play. In the impugned order adequate opportunity of hearing was given, representatives of the parties were heard and no violation of the principles of natural justice, namely non-supply of copy of report of the Committee was agitated by the petitioner before the authority which passed the order Annexure-A.

10. The learned counsel for the petitioner further contended, on the basis of this pronouncement, that where there is error of jurisdiction or lack of jurisdiction in the authority passing the impugned order, writ of certiorari can be issued ignoring the existence of alternative remedy. For this the apex court has observed in this case that there may be cases where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. This observation of the apex court does not apply to the facts of the case before me. It is not a case where there is patent lack of jurisdiction nor it is a case of patent excessive exercise of jurisdiction nor the error of jurisdiction is loudly obtrusive to the decision rendered in Annexure-A. It is also not a case where the defects highlighted in the impugned order cannot be cured in appeal. Consequently, on the basis of this pronouncement it cannot be said that on the facts and circumstances of the case, writ petition can be entertained ignoring the existence of alternative remedy.

11. The case of K. Vijayalakshmi Vs. Union of India and Others (1998) 4 SCC 37 is not directly on the point because in this case the apex court has not laid down

that even though alternative remedy exists, writ petition under Article 226 of the Constitution of India can be entertained, in spite of the fact that alternative remedy was not exhausted by the petitioner. On the other hand, in this case the order was quashed because of non-observance of the principles of natural justice. Therefore, this is not a direct authority of the apex court in support of the contention that where alternative remedy exists, writ petition can be entertained even though such remedy was not exhausted by the petitioner.

12. Likewise pronouncement in the case of Union of India Vs. Tarachand Gupta & Bros. AIR 1971 SC 1558 is also not directly on the point. In this case the order of the Collector was found without jurisdiction and as such it was quashed. This question was not directly considered by the apex court whether in face of existence of alternative remedy of appeal writ petition under Article 226 of the Constitution can be entertained or not.

13. A Division Bench pronouncement of this court in T.P. Kumaran Vs. R. Kothandaraman 1962 GLR 856 was also referred by Mr. S.B. Vakil in support of the contention that writ of certiorari can be issued. The Division Bench in this case held that every defect in a proceeding does not make the order nullity. The defect must be concerning either want of jurisdiction or excess of jurisdiction or patent violation of the principles of natural justice. Under these circumstances, writ petition can be entertained. These conditions do not exist in the instant case for entertaining the writ petition for consideration. Moreover, in view of the apex court's verdict in Sheela Devi (supra) in face of existence of alternative remedy, writ petition cannot be entertained.

14. Shri S.B. Vakil further contended regarding the scope of judicial review in such matters and placed reliance on the apex court's verdict in Ravi S. Naik Vs. Union of India AIR 1994 SC 1558. In this case the apex court considered that in spite of the fact that finality is attached to the decision of the Speaker/Chairman of the Legislative Assembly, such decision is subject to judicial review on the ground of non-compliance with rules of natural justice. The Supreme Court clarified that while applying the principles of natural justice, it must be borne in mind that they are not immutable but flexible and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with

or not has to be considered in the context of the facts and circumstances of a particular case.

15. The scope of judicial review was considered in latest pronouncement of the apex court in Apparel Export Promotion Council Vs. A.K. Chopra (1999) 1 SCC 759 decided on 20.1.1999 where it was held that the judicial review is not concerned with the correctness of the decision but is confined to the examination of the decision making process, namely, that the established principles of law and rules of natural justice and fairness have been followed or not. The court exercising powers of judicial review cannot substitute its opinion for that of the administrative authority.

16. In view of this decision also, the power of judicial review is not to be substitute with the power of appeal. Matters which have been agitated in the writ petition can be agitated before the appellate tribunal and the appeal, in the facts and circumstances of the case, is efficacious alternative remedy to the petition. Since alternative remedy has not been exhausted and it could not be shown that it was a case of patent lack of jurisdiction or apparent excessive exercise of jurisdiction or any other matter touching the jurisdiction of the authority which passed the impugned order, it is not proper and desirable to entertain this writ petition. The alleged violation of the principles of natural justice is also not of such serious nature, especially in view of the fact that adequate opportunity of hearing was afforded to the parties hence it is not further desirable to entertain this writ petition. The power of judicial review in such matters cannot be substituted for the powers of appellate tribunal to entertain and decide the disputed questions of fact, hence also this writ petition cannot be entertained.

17. For the reasons given above, the preliminary objection is sustained. The writ petition is summarily dismissed on the preliminary objection that it is not maintainable in view of the existence of alternative remedy.

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